

the purpose of benefiting fish or wildlife or producing other environmental benefits. The determination of whether to grant a permit is to be based upon stated factors, including whether the use is a beneficial use, the availability of alternative supplies, negative effects of the proposed withdrawal, cumulative effects of the proposed and other transfers, and consistency with groundwater management plans and integrated management plans.

Funding Provisions

- LB962 established a **Water Resources Trust Fund** into which state appropriations and other funds relative to the implementation of LB962 may be deposited and from which expenditures may be made for that implementation. The funds available may be used for determining which basins, subbasins and reaches need to have IMPs developed and for implementation of those IMPs. In most instances, funds provided to natural resources districts and other local subdivisions will require at least a 20% local match.

- **For FY2004-05, LB962A appropriated a total of \$2.5M** for the first year of implementation. For **FY2005-06**, the Legislature appropriated **\$7.5M**. However, for **FY2006-07**, which begins on July 1, 2006, the Legislature decided not to appropriate any funds for LB962 implementation. Instead the most recent biennial budget bill contains the following provision: "It is the intent of the Legislature that the Department of Natural Resources develop and propose a system of fees and charges to provide an ongoing source of funding for this program beginning in FY2006-07." Alternative ways of securing the necessary funding through fees and charges are being considered by the Water Policy Task Force. Legislative action likely will be needed before any fee-based system can be initiated.

- **Natural resources districts now have the authority to levy up to an additional 1 cent per one hundred dollars of assessed valuation if needed to perform their responsibilities under the Groundwater Management and Protection Act. They may also exceed the allowable annual budget increase for the same reason.**



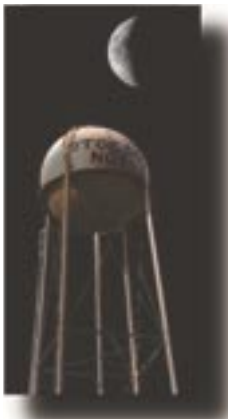
Other Provisions

- The Water Policy Task Force will continue to meet through 2009 to provide guidance on water policy matters.
- Public water suppliers (cities, villages, rural water districts, etc.) are now entitled to spacing protection for up to two years around a proposed wellfield if notice of intent to consider the land involved as a public water supply wellfield is filed with DNR. The spacing protection is from the boundaries of the tract that is proposed for the wellfield and is the greater of 1000 feet or the spacing protection provided by the NRD within which the wellfield would be located.
- The bill extended from June 30, 2005 to June 30, 2009 the last date of reporting petroleum releases if financial assistance from the Petroleum Release Remedial Action Cash Fund is to be requested.
- **LB962 also made numerous "housekeeping" amendments** to several state surface water and groundwater statutes. Those include revisions relating to: map requirements for surface water rights; use of water out of small reservoirs for watering range livestock; annual reporting by surface water users; the review and administration of instream flow appropriations; water well spacing and registration requirements; definitions for the Groundwater Management and Protection Act; the controls that NRDs may adopt in groundwater management areas; municipal transfers into NRD declared moratorium or temporary suspension areas; standardization of requirements for NRD hearings and notices thereof; the imposition of water penalties for violation of NRD cease and desist orders; and the necessity for hearings before DNR grants permits to transfer groundwater off the overlying land for industrial purposes.

For additional information on any of those provisions, contact the Department of Natural Resources.



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LB962 Implementation



On April 13, 2004, the Nebraska Legislature adopted **LB962**, a bill described by many as the most significant water policy legislation passed since at least 1996. Governor Johanns signed the bill into law on April 15, 2004.

**LB962** reflects a consensus that was reached in December by a **49 member task force appointed in 2002 by Governor Johanns**. That task force included irrigators from each of the state's 13 major river basins as well as representatives of natural resources districts, public power districts, municipalities, agricultural organizations, recreation users, environmental interests, the public at large, the Legislature's Natural Resources Committee, the Attorney General's Office and the Department of Natural Resources (DNR). According to state Director of Natural Resources, Roger Patterson, the bill makes the state and its 23 natural resources districts much more proactive in anticipating and preventing conflicts between groundwater users and surface water users. In those portions of the state where such conflicts already exist, the legislation also established principles and timelines for resolving those conflicts. Patterson indicated that deciding how to address those already **"overappropriated" river basins was one of the most difficult challenges faced by the task force**. He noted, however, that the task force finally reached agreement on how to resolve those conflicts while treating the affected water users fairly.

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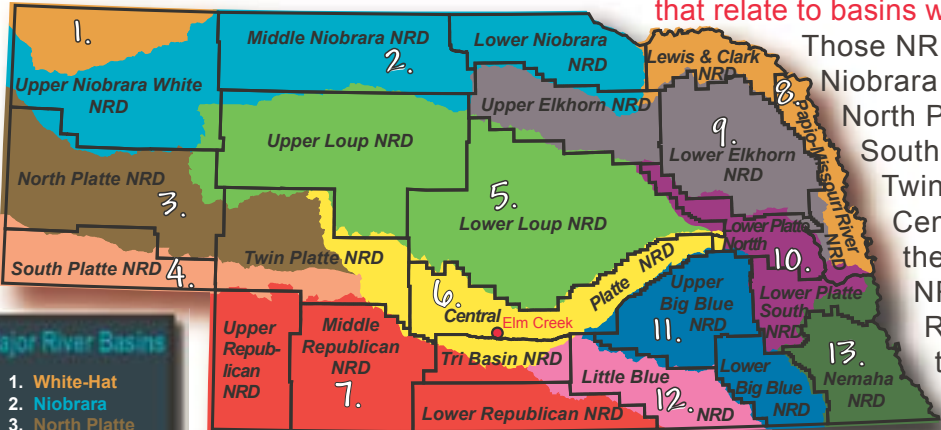
The bill also added more flexibility to current Nebraska statutes governing the transfer of surface water rights to a different location of use and it updated statutes relating to the cancellation of water rights that are no longer being used. Finally it updated a number of individual water management statutes and included the provisions of several other water related bills that were advanced to General File by the Legislature's Natural Resources Committee but would not have been acted on had they not been added to LB962.

**A more detailed summary of LB962 and the status of its implementation follows:**

Integrated Management Provisions

- **Under LB962, all or portions of eight natural resources districts are now considered "fully appropriated" and subject to the provisions of the bill that relate to basins with that designation.**

Those NRDs are: The Upper Niobrara White NRD, the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, the Upper Republican NRD, the Middle Republican NRD, and the Lower Republican NRD. Those NRDs or portions thereof are considered "fully appropriated" because, when LB962 took effect on July 16, 2004, they each were involved in an active planning process under previous law for integrated management of hydrologically connected groundwater and surface water. How each NRD is affected by LB962 is determined by the actions that district and the DNR have already taken as well as the actions they take in the future. For information in that regard, contact DNR. Note also the general description later in this brochure of the planning process and the stays that follow the designation of an area as "fully appropriated."



**Nebraska's Major River Basins and 23 Natural Resources Districts**



- On September 15, 2004, the Director of Natural Resources designated the **“overappropriated” basins in the state**. An **“overappropriated” basin is one where the extent of development is not sustainable over the long term**, i.e. the already permitted uses are in excess of what can be supported by the water supply over the long term. Consistent with the statutory criteria for such designations, the Platte, North Platte and South Platte River Basins upstream of the Kearney Canal diversion were designated as the “overappropriated” basins. At the time of designation, the Director also determined the areas that are considered to be hydrologically connected to the streams in the overappropriated basins. The map above shows both the surface water boundaries of the overappropriated basins and the areas that were determined to be hydrologically connected for purposes of the overappropriated designation.

- Beginning by January, 2006, the Department of Natural Resources will make **annual determinations of which basins, sub-basins or river reaches not previously designated as “fully appropriated” or “overappropriated” have since become “fully appropriated.”** A basin will be so designated when it is determined, taking into account the lag effect of groundwater use, **that if further development were to occur, the balance between water use and water supplies could not be sustained**. The water uses that will be considered will include all then permitted uses of both groundwater and surface water, including Nebraska instream flow appropriations.



Whenever a basin is declared “overappropriated” or “fully appropriated”, **stays on new uses of groundwater and surface water are imposed**. Those stays will remain in effect until the integrated management plan for that basin has been completed and implemented, except that for groundwater, the NRD could lift the stays during the planning process after a public hearing on such a proposal.

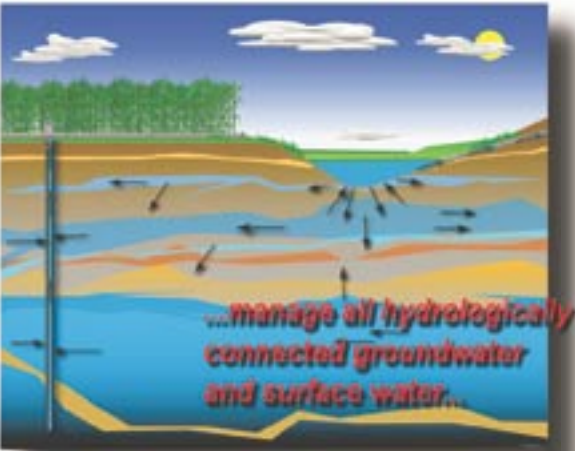
- In basins designated as either “fully appropriated” or “overappropriated”, the DNR and the NRDs involved are required to jointly develop and implement an integrated surface water and groundwater management plan (IMP) within 3 to 5 years of that designation.

- By statute, **a key goal of each IMP will be to manage all hydrologically connected groundwater and surface water** for the purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near and long term. For the “overappropriated” basins, an overall

basin wide plan will have to be developed and the goal will have to be to restore, in an incremental manner, those basins to the “fully appropriated” status. Specific objectives for the first ten year increment of implementation of the IMPs for the “overappropriated” basins are contained in the bill and are consistent with the proposed New Depletion Plan for the Platte River Cooperative Agreement.

- The IMPs may rely on a number of voluntary measures as well as the surface water and groundwater regulatory controls that are authorized by current law and are enhanced by LB962. Among the authorized groundwater controls are allocation of groundwater withdrawals, rotation of use, reduction of irrigated acres, and other measures. NRDs are given specific authority to include incentive programs in the IMPs.

- If there are **disputes between the DNR and NRDs over the development or implementation of an IMP and if they cannot resolve those disputes, a five member Interrelated Water Review Board (IWRB) will make the final decision** about which components to put into the plan or how the plan shall be implemented. The Board will consist of five members including the Governor or his or her appointee, one additional member of the Governor’s choice and three additional members appointed by the Governor from a list of at least six persons nominated by the Nebraska Natural Resources Commission.



Transfers of Surface Water Rights

- Transfers of surface water rights from one location to another are still allowed. In specified instances DNR is also authorized to issue temporary and permanent permits that either change the purpose for which water is used or change the permit to use from one type to another, e.g. from direct use to storage. **Only a temporary transfer** or change can be allowed if it involves a change in use to a different preference category. **Temporary permits** may be for as long as 30 years and may be renewable. Safeguards are added to ensure that changes in type



of permits or changes in use will not adversely impact existing users or be contrary to the public interest.

- An expedited transfer approval process is provided for some irrigation transfers if there will be no change in the diversion point, no diminution of water supply for other appropriators, no increase in the number of acres irrigated, etc. For transfers that meet those and the other criteria, neither publication of notice nor hearings will be required once DNR has promulgated the applicable rules.

Adjudication of Surface Water Rights

- The period of allowable non-use of surface water rights before cancellation without acceptable excuses has been **extended from 3 years to 5 years**. If there are excusable reasons for nonuse, the allowable period of non-use without cancellation has been **extended from 10 to 15 years**. If the unavailability of water was the reason for nonuse, the period of allowable non-use before cancellation may be **extended from 10 years to up to 30 years** or, upon petition by the appropriator, even longer if the permit is in a basin that has been determined to be overappropriated or fully appropriated and water is expected to be restored for use in accordance with an integrated management plan.

- When an appropriation held in the name of an irrigation district or company is cancelled as to use on a particular tract of land, the district shall have up to 5 years to assign the right to another tract or another use.

Transfers of Groundwater off the Overlying Land

- Natural resources districts are authorized to require as a management area control: **(1)** district approval of transfers of groundwater off the land where it is withdrawn, and **(2)** district approval of transfers of rights to use groundwater that result from district allocations imposed under the Groundwater Management and Protection Act. The district must deny or condition the transfer if needed to: **(1)** ensure consistency of the transfer with the purposes of the management area, **(2)** prevent adverse impacts on groundwater users, surface water appropriators, or the state’s ability to comply with an interstate compact, decree, or agreement, and **(3)** otherwise protect the public interest and prevent detriment to the public welfare.

- Natural resources districts also are empowered to permit groundwater transfers off the overlying land to augment supplies in wetlands or natural streams for

